

PROPERTY ASSESSMENT APPEAL BOARD
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

PAAB Docket No.2019-077-00364R

Parcel No. 190/00978-000-000

Laurie Ellen Frederick,

Appellant,

vs.

Polk County Board of Review,

Appellee.

Introduction

This appeal was filed by Laurie Frederick, who is self-represented. Assistant Polk County Attorney Dominic Anania represents the Board of Review.

Laurie Frederick owns a residential property located at 2990 NE 49th Avenue, Des Moines, Iowa. The property's January 1, 2019, assessment was set at \$144,200, allocated as \$38,500 in land value and \$105,700 in dwelling value. (Ex. A).

Frederick petitioned the Board of Review contending the assessment was not equitable compared with the assessments of other like property, the assessment was for more than the value authorized by law, there was an error in the assessment, and there was fraud or misconduct in the assessment. Iowa Code § 441.37(1)(a)(1-4) (2019). (Ex. C). The Board of Review denied her petition. (Ex. B).

Frederick appealed to PAAB reasserting her home was inequitably assessed and was assessed for more than the value authorized by law. § 441.37(1)(a)(1 & 2).

Procedural History

Frederick filed her Appeal from the Board of Review action on July 26, 2019. The appeal alleged the assessment was not equitable and was for more than the value authorized by law under Iowa Code Sections 441.37(1)(a)(1 & 2). PAAB issued a Notice of Hearing on December 3, 2019, setting the hearing for February 21, 2020. The Notice advised the parties that exhibits and witness lists must be filed and exchanged no later than 21 calendar days prior to the hearing; failure to timely file exhibits may result in their exclusion.

Frederick filed a Motion to Continue and the Board of Review did not resist it. On February 17, PAAB issued an Order setting a new hearing date for March 27.

On March 19, Frederick filed another Motion to Continue and again the Board of Review did not resist. PAAB set a third hearing date in this matter for April 27. On April 7, Frederick filed three additional exhibits. (Exs. 8-10). One exhibit, identified as Exhibit 10, was a revised Petition to the Board of Review form that appeared to add two additional appeal grounds; error in the assessment and fraud or misconduct in the assessment under sections 441.37(1)(a)(4 & 5). The Board of Review considered this filing as an attempt to amend Frederick's appeal grounds to PAAB. On April 8, it filed a response to this filing indicating the Board of Review did not consent to the attempted amendment, that it was untimely, and unsupported.

On April 27, before proceeding on the merits of the contested case, PAAB heard arguments from both parties regarding Frederick's attempt to amend her claims. PAAB ruled the Board of Review's Motion should be granted and the appeal should proceed only on the grounds of inequity and over assessment.

A hearing on the merits of the appeal then commenced. The Board of Review waived opening statements and Frederick was sworn in and began her testimony. Shortly thereafter, Frederick experienced significant difficulty communicating verbally due to health issues. With the agreement of the Board of Review, PAAB authorized the

submission of written testimony by each party. Frederick was directed to submit her written testimony within 14 days and the Board of Review 14 days thereafter. The parties were reminded of PAAB's evidentiary ruling denying Frederick's attempt to amend her appeal. The parties were not authorized to submit new exhibits.

On May 14, Frederick submitted her written testimony. Contrary to PAAB's ruling, her written narrative continued to reference her error and fraud/misconduct claims. We reiterate that we decline to consider these as part of the record based upon our previous ruling. Frederick also filed two new exhibits: a Revised Estimate of Work Required, and a Comparative Market Analysis (CMA) dated April 9, 2020, prepared by Jorge Ibarra.

On May 28, the Board of Review filed its brief and argument. The Board of Review noted it did not object to the Revised Work Estimates. It did, however, object to the CMA exhibit as untimely filed and requested its exclusion. The Board of Review summarized the evidence submitted and asserted Frederick failed to meet her legal burden to prove her claims.

On June 3, Frederick filed a Motion to Reopen Records. On the same day, the Board of Review filed a Resistance to the Motion. On June 8, Frederick filed 23 additional pictures of her property. To date, no objection has been filed to those pictures.

After review of all the filings, PAAB issued an Order on June 18 granting Frederick time to file a responsive argument to the Board of Review's argument but denying Frederick's effort to admit the CMA. PAAB reserved ruling on the twenty-three photographs and permitted the Board of Review time to file an objection. Again, Frederick was ordered to not include any additional evidence or refer to evidence, such as the CMA, that has not been admitted.

Frederick submitted her rebuttal on June 28 at which time PAAB considered the record closed.

Findings of Fact

The subject property is a one-and-a-half-story home built in 1968. It has 1120 square feet of gross living area, an unfinished walk-out basement, a 672-square-foot attached garage, a deck, and a patio. It is listed in above-normal condition with average-quality construction (grade 4-05). The Assessor's Office applied 21% physical depreciation and the Board of review applied another 34% obsolescence to the residence in the assessment. The site is 1.793 acres. (Ex. A).

Frederick purchased the property for \$69,900 in 2013, thereafter she had the home gutted and remodeled. (Ex. A; Frederick Written Statement).

Frederick raised a myriad of concerns over her 2019 assessment, but her overarching assertion both in her written submissions and her testimony is that her property is not located in "a \$144,200 neighborhood." She submitted ninety-five photographs of homes located on NE 49th Avenue, NE 30th Street, NE 31st Street, and NE 29th Street to demonstrate what she describes as "rundown and crackerbox homes" surrounding her property. (Exs. 4-7). Some of the properties do appear to suffer from more deferred maintenance, but others appear well kept. While some or all of these properties are likely listed in Exhibit 2, we cannot draw correlation between the two because we do not know the addresses associated with each specific photograph. Our examination of the photos, however, suggests they are probably generally inferior to the subject property. There is also no indication in the record of what effect, if any, these properties have on the market value of the subject. Moreover, the assessments of all of the properties in the neighborhood (DE01/2A) appear to have a very wide range from \$51,500 to \$273,400. Based on the photograph on the property record card, the subject property is well maintained and has positive curb appeal.

Frederick was critical of the Board of Review for not driving through her neighborhood and believed the entire Board of Review should have examined her photographs. The Board of Review notes indicate an offer of inspection was made to

Frederick on March 6, 2020, but was declined. (Ex. D). Frederick stated she did not understand the reason for, or timing of, the inspection offer and stated she did not want a repeat of the inspection in 2013-14, which she asserts resulted in an assessment of \$172,200. (6-28-20 Rebuttal). Frederick believed the photographs she submitted should be sufficient.

In addition to her neighborhood concerns, Frederick described numerous issues with the condition of her property and home. She stated the creek behind her home floods and will require filling and drain installation. A portion of her front yard has sunken as have her steps and planter. Her concrete patio has cracks, as does the garage floor. She described her deck as improperly constructed and needing replacement. On the interior, Frederick states the carpet throughout needs replaced. She submitted an estimate sheet showing these items would cost \$32,500 to repair or replace and twenty-three photographs documenting these conditions. (Exs. 1; revised estimate 5-14-20; & 6-8-20 photos submissions). Reviewing the photographs, while we find they do in some respects show the conditions Frederick describes, we are not persuaded these conditions would necessarily affect the subject's market value in a manner equally equivalent to the work estimate. For example, based on the photograph alone, we do not believe a sunken planter, with an estimated cost of repair of \$1000, would have a \$1000 impact on the subject's market value. We find there is a lack of evidence demonstrating the market impact of these conditions on the property's value.

According to Frederick there is no property in her neighborhood (DE01/A2) similar to her home that has sold within the last two years. (Appeal & Ex. C). On her Board of Review protest she identified two properties, in her immediate neighborhood pocket with assessments of \$109,600 and \$144,500 respectively, and averaged these with her previous assessment to arrive at her proposal of actual value of \$129,033. (Ex C). We note her reference to a \$144,500 assessed property in her neighborhood pocket belies her allegation that hers is not a \$144,200 neighborhood.

On her appeal to PAAB, Frederick identified what she considered to be the only property close to hers in terms of style, living area, and site size. She states this property has an assessment of \$127,500 for January 1, 2019. The record did not contain information about these properties or their comparability to the subject. Thus PAAB took judicial notice of the publicly available information consisting of the property record cards and cost sheets for each property. (Exs. E-G). The following table summarizes that information.

Address	Site size (acres)	Grade	Condition	Gross Living Area (GLA)	Basement Finish	2019 Assessed Value
Subject	1.79	4-05	Above Normal	1120	0	\$144,200
1 – 4695 NE 27th Ct	1.011	5-05	Below Normal	1116	0	\$109,600
2 – 4510 NE 29th St	1.011	4+00	Normal	962	640	\$144,500
3 – 4640 NE 32nd St	0.211	4+00	Normal	1107	n/a	\$127,500

None of the comparables have recently sold. They are all located near the subject, but are all smaller in gross living area and site size. Additionally, all have lower condition ratings than the subject. Comparable 3 has no basement. All have smaller sites than the subject and Comparable 3's site is significantly smaller.

Frederick also submitted multiple screenshots from Zillow.com's website reflecting median home values in zip code 50317 from September 2019 to March 2020. (Ex. 9). The most recent screenshot indicated a median home value of \$132,900 and forecasted increases in values. The Board of Review noted this information provided no indication of the January 1, 2019, value of the subject property.

Analysis & Conclusions of Law

PAAB has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. PAAB is an agency and the provisions of the Administrative Procedure Act apply. § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). PAAB may consider any grounds under Iowa Code section 441.37(1)(a) properly raised by the

appellant following the provisions of section 441.37A(1)(b) and Iowa Admin. Code Rule 701–126.2(2-4). New or additional evidence may be introduced. *Id.* PAAB considers the record as a whole and all of the evidence regardless of who introduced it. *Id.*; *see also Hy-Vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct, but the taxpayer has the burden of proof. §§ 441.21(3); 441.37A(3)(a). The burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Compiano v. Bd. of Review of Polk Cnty.*, 771 N.W.2d 392, 396 (Iowa 2009) (citation omitted).

Before examining Frederick’s claims under Iowa Code section 441.37, we note her testimony includes a number of allegations regarding the conduct of Polk County officials and the Polk County Supervisors, questions about the Polk County Board of Review membership and board size, concerns about the lack of settlement or neighborhood inspection, and other statements which we find are not relevant to claims over which PAAB has jurisdiction. PAAB’s jurisdiction is statutory and limited to the subject property’s assessment within the confines of the claims properly raised on appeal.

Frederick contends the subject property is inequitably assessed and over assessed. § 441.37(1)(a)(1 & 2). The burden of proof of each of these claims is on Frederick. § 441.21(3).

To prove inequity, a taxpayer may show an assessor did not apply an assessing method uniformly to similarly situated or comparable properties. *Eagle Food Centers v. Bd. of Review of the City of Davenport*, 497 N.W.2d 860, 865 (Iowa 1993). Frederick offered no evidence of the Assessor applying an assessment method in a non-uniform manner.

Alternatively, a taxpayer may show the property is assessed higher proportionately than other like property using criteria set forth in *Maxwell v. Shivers*, 133 N.W.2d 709 (Iowa 1965). The *Maxwell* test provides that inequity exists when, after considering the actual values (2018 sales) and assessed values (2019) of comparable

properties, the subject property is assessed at a higher proportion of its actual value. *Id.* Frederick offered three properties she believes support her claim, but none sold in 2018. Accordingly, the *Maxwell* test cannot be completed and we find Frederick has not demonstrated the subject's assessment is inequitable

In an appeal alleging the property is assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2), the taxpayer must show: 1) the assessment is excessive and 2) the subject property's correct value. *Soifer v. Floyd Cnty. Bd. of Review*, 759 N.W.2d 775, 780 (Iowa 2009) (citation omitted). Sale prices of the subject property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b).

The subject property has not recently sold, nor did Frederick provide any evidence of the property's current value through comparable sales adjusted for differences, an appraisal, or an admissible Comparable Market Analysis (CMA), which is typical evidence to support a claim of over assessment. Her comparable properties also had not recently sold and their comparability was questionable. Frederick's desire to average their assessments to arrive at her property's value is not a recognized valuation methodology under section 441.21. Additionally, we find deducting the estimated repair costs from the assessed value is not necessarily indicative of her property's market value.

Frederick indicates there is a lack of comparable property sales within a two-mile radius of her property. The lack of nearby comparable sales would require either expanding the sales search area or perhaps turning to another approach to value. Frederick has done neither. The only indication of the subject's value in the record is the market adjusted cost report offered by the Board of Review concluding a value of \$144,200.

Viewing the record as a whole, we conclude that Frederick failed to show her property is over assessed.

We acknowledge Frederick's testimony and submissions indicated issues related to her property's condition and location. For this reason, it may be in Frederick's interest to contact the Assessor's Office and request an inspection of her property to ensure her improvements and site are properly listed for future assessments. For her benefit an inspection is an accommodation offered by the Assessor's Office to verify the property's listing, including its condition.

Order

PAAB HEREBY AFFIRMS the Polk County Board of Review's action.

This Order shall be considered final agency action for the purposes of Iowa Code Chapter 17A.

Any application for reconsideration or rehearing shall be filed with PAAB within 20 days of the date of this Order and comply with the requirements of PAAB administrative rules. Such application will stay the period for filing a judicial review action.

Any judicial action challenging this Order shall be filed in the district court where the property is located within 30 days of the date of this Order and comply with the requirements of Iowa Code section 441.37B and Chapter 17A.19 (2019).



Elizabeth Goodman, Board Member



Dennis Loll, Board Member



Karen Oberman, Board Member

Copies to:

Laurie Frederick by EFile

Polk County Board of Review by eFile